

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PNMAC MORTGAGE
OPPORTUNITY FUND
INVESTORS, LLC,

Plaintiff,

No. C 12-1151 PJH

v.

ORDER REMANDING CASE

LINDA ROTHBALLER,

Defendant.

Defendant Linda Rothballer removed this unlawful detainer action from the Superior Court of California, County of San Mateo, on March 8, 2012. The court has reviewed the notice of removal and the state court complaint, and finds that the case must be remanded for lack of subject matter jurisdiction.

Subject matter jurisdiction is fundamental and cannot be waived. Billingsly v. C.I.R., 868 F.2d 1081, 1085 (9th Cir. 1989). Federal courts can adjudicate only those cases which the Constitution and Congress authorize them to adjudicate – those involving diversity of citizenship or a federal question, or those to which the United States is a party. Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 377 (1994); see also Chen-Cheng Wang ex rel. United States v. FMC Corp., 975 F.2d 1412, 1415 (9th Cir. 1992) (federal courts have no power to consider claims for which they lack subject-matter jurisdiction).

A defendant may remove a civil action filed in state court if the action could have originally been filed in federal court. 28 U.S.C. § 1441. The removal statutes are construed restrictively, however, so as to limit removal jurisdiction. Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 108-09 (1941); see also Matheson v. Progressive Specialty Ins. Co., 319 F.3d 1089, 1090 (9th Cir. 2003).

1 The burden of establishing federal jurisdiction for purposes of removal is on the party
2 seeking removal. Valdez v. Allstate Ins. Co., 372 F.3d 1115, 1117 (9th Cir. 2004). The
3 district court must remand the case if it appears before final judgment that the court lacks
4 subject matter jurisdiction. 28 U.S.C. § 1447(c); Albingia Versicherungs A.G. v. Schenker
5 Int'l, Inc., 344 F.3d 931, 936 (9th Cir. 2003).

6 Subject matter jurisdiction is determined from the face of the complaint. Toumajian
7 v. Frailey, 135 F.3d 648, 653 n.2 (9th Cir. 1998) (“[f]or removal to be appropriate, a federal
8 question must appear on the face of the complaint”); see also Caterpillar Inc. v. Williams,
9 482 U.S. 386, 392 (1987) (federal question must be presented on face of plaintiff’s properly
10 pleaded complaint); Fifty Assocs. v. Prudential Ins. Co. of Am., 446 F.2d 1187, 1189-90
11 (9th Cir. 1970) (existence of diversity jurisdiction must be sufficient on the face of the
12 complaint). Jurisdiction may not be based on a claim raised as a defense or a
13 counterclaim. See Smith v. Grimm, 534 F.2d 1346, 1350 (9th Cir. 1976).

14 Plaintiff PNMAC Mortgage Opportunity Fund Investors LLC (“PNMAC”) filed the
15 complaint at issue in San Francisco Superior Court on December 12, 2011, against
16 defendant Linda Rothballer and ten DOE defendants. The complaint alleges a single
17 cause of action under state law, for unlawful detainer to recover possession of property
18 following a non-judicial foreclosure sale of the property.

19 On October 6, 2011, the property was sold to plaintiff in a trustee’s sale. The
20 Trustee’s Deed Upon Sale was recorded in the Official Records in the County of San Mateo
21 on October 20, 2011. A copy of the unlawful detainer complaint, which includes a copy of
22 the Trustee’s Deed Upon Sale as an exhibit, is attached as Exhibit A to defendant’s notice
23 of removal.

24 The unlawful detainer complaint asserts that following the trustee’s sale, defendant
25 was served with a Notice to Vacate Premises, and that defendant failed to deliver up
26 possession of the premises. Defendant demurred to the complaint, asserting that the
27 Notice to Vacate was “inappropriate and defective,” but (according to the notice of removal)
28 the Superior Court overruled the demurrer.

1 The notice of removal alleges no facts from which the court can find that it has
2 federal question jurisdiction under 28 U.S.C. § 1331. Defendant asserts that jurisdiction is
3 proper under the laws of the United States, because the Notice to Vacate failed to comply
4 with the federal Protecting Tenants at Foreclosure Act, 12 U.S.C. § 5220, and thus, her
5 demurrer “depend[s] on the determination of Defendants’ rights and Plaintiff’s duties under
6 federal law.” Notice of Removal ¶¶ 8, 10.

7 However, while defendant purported to remove the action under federal question
8 jurisdiction by asserting that she has claims or defenses based on federal law, the
9 complaint itself does not raise any federal statutory or constitutional provision as the basis
10 for the unlawful detainer action. Rather, the complaint alleges only a single claim under
11 state law, for unlawful detainer “against occupants holding over after nonjudicial sale under
12 power of sale in deed of trust.” As no federal question is raised on the face of the
13 complaint, there is no federal question jurisdiction.

14 Nor – although defendant does not so allege – is there diversity jurisdiction under 28
15 U.S.C. § 1332, as the caption page specifies that the amount in controversy is “up to
16 \$10,000.” The complaint seeks restitution and possession of the property, plus “costs of
17 suit,” and “such other and further relief as the [c]ourt deems just and proper.” The amount
18 in controversy is not the assessed value or the sales value of the property, but rather
19 whatever sum plaintiff is seeking in the state court action. Thus, liability does not exceed
20 the \$75,000 jurisdictional minimum.

21 Accordingly, as the court lacks subject matter jurisdiction, and would have no power
22 to consider any of defendant’s claims or defenses, the case must be REMANDED to the
23 San Mateo Superior Court.

24
25 **IT IS SO ORDERED.**

26 Dated: March 14, 2012



27 PHYLLIS J. HAMILTON
28 United States District Judge